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*** ANNOTATIONS CURRENT THROUGH NOVEMBER 19, 2003 ***

TITLE 27. RAILROADS AND OTHER REGULATED UTILITIES
CHAPTER 364. TELECOMMUNICATIONS COMPANIES
PART I. GENERAL PROVISIONS

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

Fla. Stat. § 364.051 (2003)

§ 364.051. Price regulation

(1) *SCHEDULE*. —Notwithstanding any other provisions of this chapter, the following local exchange telecommunications companies shall become subject to the price regulation described in this section on the following dates:

(a) For a local exchange telecommunications company with 100,000 or more access lines in service as of July 1, 1995, such company may file with the commission a notice of election to be under price regulation effective January 1, 1996, or when a competitive local exchange telecommunications company is certificated to provide local exchange telecommunications services in its service territory, whichever is later.

(b) Effective on the date of filing its election with the commission, but no sooner than January 1, 1996, any local exchange telecommunications company with fewer than 100,000 access lines in service on July 1, 1995, that elects pursuant to *s. 364.052* to become subject to this section.

(c) Each company subject to this section shall be exempt from rate base, rate of return regulation and the requirements of *ss. 364.03, 364.035, 364.037, 364.05, 364.055, 364.14, 364.17, and 364.18*.

(2) *BASIC LOCAL TELECOMMUNICATIONS SERVICE*. —Price regulation of basic local telecommunications service shall consist of the following:

(a) Effective January 1, 1996, the rates for basic local telecommunications service of each company subject to this section shall be capped at the rates in effect on July 1, 1995, and such rates shall not be increased prior to January 1, 2000. However, the basic local telecommunications service rates of a local exchange telecommunications company with more than 3 million basic local telecommunications service access lines in service on July 1, 1995, shall not be increased prior to January 1, 2001.

(b) Upon the date of filing its election with the commission, the rates for basic local telecommunications service of a company that elects to become subject to this section shall be capped at the rates in effect on that date and shall remain capped as stated in paragraph (a).

(c) There shall be a flat-rate pricing option for basic local telecommunications services, and mandatory measured service for basic local telecommunications services shall not be imposed.

(3) If it is determined that the level of competition justifies the elimination of price caps in an exchange served by a local exchange telecommunications company with less than 3 million basic local telecommunications service access lines in service, or at the end of 5 years for any local exchange telecommunications company, the local exchange telecommunications company may thereafter on 30 days' notice adjust its basic service revenues once in any 12-month period in an amount not to exceed the change in inflation less 1 percent. Inflation shall be measured by the changes in the Gross Domestic Product Fixed 1987 Weights Price Index, or successor fixed weight price index, published in the Survey of Current Business or a publication, by the United States Department of Commerce. In the event any local exchange

telecommunications company, after January 1, 2001, believes that the level of competition justifies the elimination of any form of price regulation, the company may petition the Legislature.

(4) Notwithstanding the provisions of subsection (2), any local exchange telecommunications company that believes circumstances have changed substantially to justify any increase in the rates for basic local telecommunications services may petition the commission for a rate increase, but the commission shall grant such petition only after an opportunity for a hearing and a compelling showing of changed circumstances. The costs and expenses of any government program or project required in part II shall not be recovered under this subsection unless such costs and expenses are incurred in the absence of a bid and subject to carrier-of-last-resort obligations as provided for in part II. The commission shall act upon any such petition within 120 days of its filing.

(5) *NONBASIC SERVICES.* —Price regulation of nonbasic services shall consist of the following:

(a) Each company subject to this section shall maintain tariffs with the commission containing the terms, conditions, and rates for each of its nonbasic services, and may set or change, on 15 days' notice, the rate for each of its nonbasic services, except that a price increase for any nonbasic service category shall not exceed 6 percent within a 12-month period until there is another provider providing local telecommunications service in an exchange area at which time the price for any nonbasic service category may be increased in an amount not to exceed 20 percent within a 12-month period, and the rate shall be presumptively valid. However, for purposes of this subsection, the prices of:

1. A voice-grade, flat-rate, multi-line business local exchange service, including multiple individual lines, centrex lines, private branch exchange trunks, and any associated hunting services, that provides dial tone and local usage necessary to place a call within a local exchange calling area; and

2. Telecommunications services provided under contract service arrangements to the SUNCOM Network, as defined in chapter 282, shall be capped at the rates in effect on July 1, 1995, and such rates shall not be increased prior to January 1, 2000; provided, however, that a petition to increase such rates may be filed pursuant to subsection (4) utilizing the standards set forth therein. There shall be a flat-rate pricing option for multi-line business local exchange service, and mandatory measured service for multi-line business local exchange service shall not be imposed. Nothing contained in this section shall prevent the local exchange telecommunications company from meeting offerings by any competitive provider of the same, or functionally equivalent, nonbasic services in a specific geographic market or to a specific customer by deaveraging the price of any nonbasic service, packaging nonbasic services together or with basic services, using volume discounts and term discounts, and offering individual contracts. However, the local exchange telecommunications company shall not engage in any anticompetitive act or practice, nor unreasonably discriminate among similarly situated customers.

(b) The commission shall have continuing regulatory oversight of nonbasic services for purposes of ensuring resolution of service complaints, preventing cross-subsidization of nonbasic services with revenues from basic services, and ensuring that all providers are treated fairly in the telecommunications market. The cost standard for determining cross-subsidization is whether the total revenue from a nonbasic service is less than the total long-run incremental cost of the service. Total long-run incremental cost means service-specific volume and nonvolume-sensitive costs.

(c) The price charged to a consumer for a nonbasic service shall cover the direct costs of providing the service and shall, to the extent a cost is not included in the direct cost, include as an imputed cost the price charged by the company to competitors for any monopoly component used by a competitor in the provision of its same or functionally equivalent service.

(6) After a local exchange telecommunications company that has more than 1 million access lines in service has reduced its intrastate switched network access rates to parity, as defined in *s. 364.164(5)*, the local exchange telecommunications company's basic local telecommunications service may, at the company's election, be subject to the same regulatory treatment as its nonbasic services. The company's retail service quality requirements that are not already equal to the service quality requirements imposed upon the competitive local exchange telecommunications companies shall thereafter be no greater than those imposed upon competitive local exchange telecommunications companies unless the commission, within 120 days after the company's election, determines otherwise. In such event, the commission may grant some reductions in service quality requirements in some or all of the company's local calling areas. The commission may not impose retail service quality requirements on competitive local exchange telecommunications companies greater than those existing on January 1, 2003.

(7) If a local exchange telecommunications company elects, pursuant to subsection (6), to subject its retail basic local telecommunications services to the same regulatory treatment as its nonbasic services, the local exchange telecommunications company may petition the commission for regulatory treatment of its retail services at a level no greater than that imposed by the commission upon competitive local exchange telecommunications companies. The local exchange telecommunications company shall:

(a) Show that granting the petition is in the public interest;

(b) Reduce its intrastate switched network access rates to its local reciprocal interconnection rate upon the grant of the petition.

The commission shall act upon such a petition within 9 months after its filing with the commission. In making its determination to either grant or deny the petition, the commission shall determine the extent to which the level of competition faced by the local exchange telecommunications company permits and will continue to permit the company to have its retail services regulated no differently than the competitive local exchange telecommunications companies are then being regulated. The commission may not increase the level of regulation for competitive local exchange telecommunications companies to a level greater than that which exists on the date the local exchange telecommunications company files its petition.

(8) The provisions described in subsections (6) and (7) shall apply to any local exchange telecommunications company with 1 million or fewer lines in service that has reduced its intrastate switched network access rates to a level equal to the company's interstate switched network access rates in effect on January 1, 2003.

HISTORY: s. 9, ch. 95-403; s. 8, ch. 98-277; s. 3, ch. 2000-334; s. 6, ch. 2003-32.

NOTES:

AMMENDMENTS

The 2003 amendment by s. 6, ch. 2003-32, effective May 23, 2003, in (1)(a), substituted "a competitive local exchange" for "an alternative local exchange"; in (3), substituted "If" for "In the event that" and substituted "revenues" for "prices"; and added (6) through (8).

LexisNexis (TM) Notes:

CASE NOTES

1. Where the disputed late payment charge was properly labeled as a "non-basic service category" due to the local exchange carrier's representations and industry history, the proposed price increase was above the six percent annual limitation of *Fla. Stat. ch. 364.051(5)(a)*, and the findings of the public service commission had to stand. *Bellsouth Telcoms., Inc. v. Jacobs*, 834 So. 2d 855, 2002 Fla. LEXIS 2268, 27 Fla. L. Weekly S 921 (Fla. 2002).

2. Denial of a phone company's reclassification request, based upon a finding that the rate regroupings constituted increases in rates for basic local telecommunications service and certain protected non-basic service and that these increases were prohibited by *Fla. Stat. ch. 364.051*, was not clearly erroneous; it was not error to interpret rate regrouping as being a prohibited price increase. *Bellsouth Telecomms., Inc. v. Johnson*, 708 So. 2d 594, 1998 Fla. LEXIS 607, 23 Fla. L. Weekly S 206 (Fla. 1998).

LAW REVIEWS

1. 24 Fla. St. U.L. Rev. 179, COMMENT: TELECOMMUNICATIONS REFORM AND THE DEATH OF THE LOCAL EXCHANGE MONOPOLY*, Fall, 1996